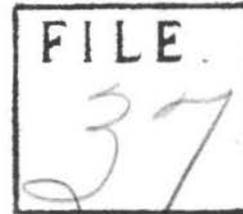


COUNTY COURTS: Mortgage for county sinking funds must convey title in fee simple.

May 21, 1942

Honorable Chas. K. Hart  
Prosecuting Attorney  
Linn County  
Brookfield, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of May 20, 1942.

As we understand your question, a voluntary association in the county has rented or leased a tract of land for the purpose of growing vegetables to be canned and preserved, the product to be used to furnish free lunches for indigent pupils in the schools of Linn County. The organization desires to borrow \$1,000 from the sinking fund of the county, and the authority of the county court to make a loan under such circumstances has been questioned.

There are two provisions which govern the lending of money from the county sinking fund created for the purpose of the payment of any county indebtedness on bonds. They are as follows:

Section 13776, R. S. Mo. 1939 -

"The several county courts of this state are hereby authorized and required to loan out any money in the hands of the treasurer of such county collected for the purpose of constituting a sinking fund for the payment of the principal of any indebtedness incurred, for which bonds are outstanding, or collected to pay interest

on the bonds of such county issued, and which has not been applied in the payment of such interest, in any case where such bonds are or may be in litigation, or the validity of which is at the time being contested by judicial proceedings, or bonds maturing at the highest rate of interest that can be obtained, not exceeding eight nor less than five per cent: Provided, that no loan shall, in case of loan of sinking fund, extend beyond the maturity of the indebtedness said sinking fund is provided for and intended to pay, but shall be due and payable a sufficient time before the maturity of said indebtedness to insure prompt payment thereof."

Section 13777, R. S. Mo. 1939 -

"When any such money shall be loaned by the county court, they shall cause the same to be secured by a mortgage in fee on real estate, free from all liens and encumbrances, within the county, of the value of double the amount of the loan, with a bond and personal security in addition thereto; and no loan shall be made to any person other than an inhabitant of the same county, nor shall any person be accepted as security who is not at the time a resident householder therein, who does not own and is not assessed on property in an amount equal to that loaned in addition to all debts for which he is otherwise liable, and property exempt from execution."

We think that that part of the latter section which requires that the money to be loaned be "secured by a mortgage in fee on real estate, free from all liens and encumbrances, \* \* \*" furnishes a direct answer to the question presented.

The word "fee" has been interpreted when applied to lands and conveyances to mean the largest possible estate which can be held in lands. It is synonymous with "fee simple" and "fee absolute." The Supreme Court of Missouri has consistently followed this definition. In *Jecko, Trustee v. Taussig*, 45 Mo. 167, we find the rule clearly expressed as follows, l. c. 169-170:

" \* \* \* The term 'fee' implies an inheritable estate, and the addition of the word 'simple,' forming the compound word 'fee simple,' as used in 'modern estates' and conveyancing, adds nothing to the force and comprehensiveness of the original term. (1 Washb. on Real Prop. 65-6.) And Mr. Washburn says that a 'fee simple is the largest possible estate which a man can have in lands, being an absolute estate in perpetuity;' and further, that 'an estate in fee simple conveys at once the idea of an interest of unlimited duration.' (Id. 59, 66.) Nor does the addition of the term 'absolute,' as 'fee simple absolute,' add anything to the force and meaning of term 'fee' or 'fee simple.' (Id.) In modern estates these several terms, 'fee,' 'fee simple,' and 'fee simple absolute' are substantially synonymous."

To eliminate any question, the Legislature made the further provision in Section 13779, R. S. Mo. 1939, that "every mortgage taken under the provisions of this article shall be in the ordinary form of a conveyance in fee."

#### CONCLUSION

It is the conclusion of this department that the county court may loan money from the sinking fund with real

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estate as security only when the borrower is possessed of a title in fee simple to the land covered by the mortgage and securing the indebtedness.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

RLH:HR